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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. EFRAIN A. GUIZAR, Defendant and Appellant.	B148507 (Super. Ct. No. BA116026)

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen E. O'Neil, Judge. Affirmed.

Wiley Ramey for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Marc E. Turchin, Acting Senior Assistant Attorney General, Pamela C. Hamanaka, Supervising Deputy Attorney General, and Corey J. Robins, Deputy Attorney General, for Plaintiff and Respondent.

Defendant, Efrain A. Guizar, appeals from the denial of his *coram nobis* petition. On August 27, 1996, defendant pled guilty to conspiracy to manufacture more than 25 gallons of methamphetamine (Pen. Code,[1] § 182, subd. (a)(1); Health & Saf. Code, §§ 11379.6, subd. (a), 11379.8, subd. (a)(3)). We affirmed his conviction on September 9, 1997. (*People v. Guizar* (Sept. 9, 1997, B106810) [nonpub. opn.].) The remittitur issued on November 21, 1997. On March 2, 1999, defendant filed a habeas corpus petition in the superior court alleging he was denied the right to an interpreter at the time he entered his guilty plea; was not informed of his right to an interpreter; and did not personally, knowingly, and voluntarily waive the right to an interpreter. The superior court denied the petition on March 4, 1999. Defendant filed a similar habeas corpus petition within this Court. In denying the petition on June 17, 1999, we noted: "At the time of petitioner's guilty plea, petitioner stated that he was comfortable using English, as he had throughout all court proceedings. Petitioner did not request the services of an interpreter although one was present." (*In re Guizar* (June 17, 1999, B132522) [nonpub. order].) Defendant then filed a habeas corpus petition with the California Supreme Court on August 25, 1999. The status of that petition is not part of the record. On January 12, 2001, defendant filed a "motion to set aside void plea (writ of error coram nobis)" in the superior court alleging his plea was "involuntarily and unintelligently" entered into without the benefit of an interpreter and he was denied effective assistance of counsel. That motion was denied on March 12, 2001, for the same reasons stated in the superior court's March 4, 1999, order. This appeal followed.

Defendant argues he did not intelligently waive his constitutional right to a Spanish interpreter. He further argues that his plea is invalid because it was taken in violation of a fundamental constitutional right. Defendant states he: was "obviously confused at the time of his plea"; was "apparently not present during any of the manufacturing activity and/or was not present at the time of the seizure of any of the evidence . . . ."; and although

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1 All further statutory references are to the Penal Code unless otherwise indicated.

he was asked whether he was comfortable speaking English, no official advisement or waiver of his right to have an interpreter assist him occurred.

However, defendant appeared in court on numerous occasions prior to his plea in this matter. An interpreter assisted him at his arraignment and various appearances. However, defendant appeared without an interpreter on June 27, 1995, January 10, 1996, and March 15, 1996. At the time the plea was entered on August 27, 1996, a Spanish interpreter assisted defendant's co-defendant, Daniel Cardenas Sandoval. The following colloquy occurred: "THE COURT: Mr. Guizar is present. [¶] [DEFENDANT]: Yes, sir. [¶] THE COURT: Represented by [Defense Counsel]. [¶] Mr. Guizar, you understand English, don't you? [¶] [DEFENDANT]: Yes, sir. [¶] THE COURT: We went through once before about whether your lawyer was going to file a declaration that you understood English and what have you when you were represented by the public defender. [¶] That never happened; is that correct? It did not happen? [¶] [DEFENDANT]: No. [¶] THE COURT: All right. I asked you a negative question. [¶] [Defense Counsel], he understands English as far as you know? [¶] [DEFENSE COUNSEL]: Yes, perfectly, your honor." The trial court subsequently explained to defendant that the prosecutor was offering a 15-year sentence to settle the case. Defendant responded, "Yeah, I know what is going on." In response to the trial court's inquiry, defense counsel noted that the potential sentence was 26 years with the possibility of an additional prison sentence for another case. The pleas of both Mr. Sandoval and defendant were taken simultaneously. A Spanish interpreter assisted Mr. Sandoval. The trial court noted that both Mr. Sandoval and defendant had been present when the pleas were taken from other defendants in the conspiracy. The court stated: "You sat here while I have taken the pleas from the other defendants. So as I said before, if you don't understand something I am going to tell you, let me know, and I will try to explain it to you in other language or other terms or terminology." At the time the pleas were taken, defendant personally acknowledged that he understood each of his constitutional rights and admitted the allegation that the substance containing methamphetamine exceeded 25 gallons. After the plea was entered, defendant asked to be sentenced the same day.

We review the denial of a writ of error *coram nobis* under the standard of abuse of discretion. (*People v. Tuthill* (1948) 32 Cal.2d 819, 821-822; see also *People v. Fairbank* (1997) 16 Cal.4th 1223, 1254 [denial of a motion to withdraw a guilty plea is subject to review for abuse of discretion]; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125 [trial court's exercise of discretion "'must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice'", italics original]; *People v. Jordan* (1986) 42 Cal.3d 308, 316 [same].) The California Supreme Court has held: "The writ of *coram nobis* is granted only when three requirements are met. (1) Petitioner must 'show that some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have prevented the rendition of the judgment' (*People v. Mendez* [(1946)] 28 Cal.2d 686, 688 []; accord, *People v. Tuthill*[, *supra*] 32 Cal.2d [at p.] 821 []; *People v. Reid* [(1924)] 195 Cal. 249, 255 [].) (2) Petitioner must also show that the 'newly discovered evidence . . . [does not go] to the merits of the issues tried; issues of fact, once adjudicated, even though incorrectly, cannot be reopened except on motion for new trial.' (*People v. Tuthill*[, *supra*] 32 Cal.2d [at p.] 822 []; accord, *In re Lindley* [(1947)] 29 Cal.2d 709, 725-726 []; [citation].) . . . (3) Petitioner 'must show that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ. . . . [Citations.]'" (*People v. Shipman* (1965) 62 Cal.2d 226, 230; see also *People v. Ibanez* (1999) 76 Cal.App.4th 537, 545-546; *People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1618-1619; *People v. Soriano* (1987) 194 Cal.App.3d 1470, 1474.)

Defendant has failed to establish the existence of a fact that was not presented to the trial court through no fault of his own that does not go to the merits of his case and would have prevented the entry of judgment. Defendant's claims are not new to the Supreme Court, us, or the superior court. Defendant has raised them repeatedly in various forms and forums. The record is clear. Defendant had appeared without an interpreter prior to the time of his plea. When questioned at the time of the plea, defendant acknowledged his

understanding of English as well as his willingness to proceed. Defendant did not request the assistance of an interpreter. His responses to the trial court's inquiries were consistent with an understanding of what was being asked. An interpreter assisted Mr. Sandoval as each inquiry was addressed by the court. The record affirmatively demonstrates that defendant's plea was knowingly and intelligently made under the totality of the circumstances. (*Hill v. Lockhart* (1985) 474 U.S. 52, 56; *People v. Wash* (1993) 6 Cal.4th 215, 269; *People v. Howard* (1992) 1 Cal.4th 1132, 1177-1178, 1180.)

Moreover, in his declaration in support of his *coram nobis* petition in the superior court, defendant states that his English is not sophisticated or educated. However, he did not deny that he understood the proceedings. Rather, he stated he did not understand that he might have a defense of entrapment. He also states that the concepts of his constitutional rights "would have had to have been explained to me by an experienced attorney acting through an interpreter and they were not." These issues go to the merits of the case and are not appropriately raised by a *coram nobis* petition. (*People v. Shipman, supra,* 62 Cal.2d at p. 230; *People v. Tuthill, supra,* 32 Cal.2d at pp. 821-822; *People v. Ibanez, supra,* 76 Cal.App.4th at pp. 545-546; *People v. Castaneda, supra,* 37 Cal.App.4th at pp. 1618-1619; *People v. Soriano, supra,* 194 Cal.App.3d at p. 1474.)

The denial of the *coram nobis* petition is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

TURNER, P.J.

We concur:

GRIGNON, J. WILLHITE, J.*

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* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.